

CALIFORNIA TAX POLICY CONFERENCE
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NEXUS
(JUST PASSING THROUGH)

Arthur R. Rosen
McDermott, Will & Emery
New York, NY
arosen@mwe.com

NEXUS (JUST PASSING THROUGH)

- History
- Current Congressional Activity
- Potential Issues if No Federal Action
 - Economic/Intangibles Nexus
 - Minimal Physical Presence
 - Attribution of Physical Presence
 - State Legislation

History of the State Tax Nexus Wars

Sales and Use Taxes

1930s - Illinois

1942 - Nelson v. Sears, Roebuck & Co.
Nelson v. Montgomery Ward & Co.

1967 - National Bellas Hess, Inc. v.
Department of Revenue of
the State of Illinois

1980s - Breaking the Law

1992 ← Quill Corporation
v. North Dakota

late 1990s ← E-Commerce

National Tax Association's
Telecommunications and
Electronic Commerce Project - **1997** - **1999**

Advisory Commission on
Electronic Commerce - **1999** - **2000**

Business Activity Taxes

Northwestern
States Portland
Cement Company
v. State of
Minnesota - **1959**

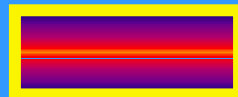
P.L. 86-272 - **1959**

1992

late 1990s

1997 - **1999** - National Tax Association's
Telecommunications and
Electronic Commerce Project

1999 - **2000** - Advisory Commission on
Electronic Commerce



THE FUTURE

Current Congressional Nexus Activity

- Wyden (S. 288)
- Istook (H.R.1410)
- Dorgan (S.512)
- Goodlatte/Boucher/Cox (H.R. 2526)
- Gregg/Kohl (S.664)

NEXUS

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- **Economic/Intangibles Nexus (Non-Sales Taxes)**
 - **Prior Cases**
 - *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992)
 - *Geoffrey, Inc. v. SC Tax Comm'n*, 437 S.E. 2d 13 (1993)
 - *Cerro Copper Products, Inc*, AL Dep't of Rev. (1995)
 - *K-Mart Properties, Inc.*, NM Tax and Rev. Dep't (2000)
 - *J.C.Penney Nat'l Bank v. Johnson*, TN Ct. of App. (1999)

NEXUS

(JUST PASSING THROUGH)

- **Economic/Intangibles Nexus**
 - **Future Issues**
 - **Will an out-of-state manufacturer be subject to the tax jurisdiction of California if its sole contact with the state is having customers here?**
 - **Will an out-of-state online brokerage firm be subject to the tax jurisdiction of California if its sole contact with the state is having customers here?**
 - **Will an out-of-state software developer be subject to the tax jurisdiction of California if its sole contact with the state is having a licensee use its product here?**

NEXUS

(JUST PASSING THROUGH)

- **Minimal Physical Presence**

- **Prior Cases**

- *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992)
 - *FL Dep't of Rev. v. Share Int'l, Inc.* 676 So. 2d 1362 (1996)
 - *InterCard Inc.*, 14 P. 3d 1111 (Kan. 2000)
 - *Care Computer Systems, Inc. v. AZ Dep't of Rev.* 4 P.3d 469 (2000)
 - *Brown's Furniture, Inc. v. Wagner*, 665 N.E. 2d 795 (Ill. 1996)

NEXUS (JUST PASSING THROUGH)

- **Minimal Physical Presence**
 - **Future Issues**
 - **Will a single two-day visit each and every year by a market-related employee subject an out-of-state employer to the tax jurisdiction of California?**
 - **If an out-of-state corporation closes its single California store, will it be subject to the tax jurisdiction of California thereafter?**

NEXUS

(JUST PASSING THROUGH)

Attributional Nexus - Agency

- **Prior Cases**

- *Scripto, Inc. v. Carson*, 362 U.S. 207 (1960)
- *Bloomington's By Mail, Ltd. v. Commwth*, 567 A.2d 773 (Pa. Commw. Ct. 1989)
- *SFA Folio Collections, Inc. v. Bannon*, 585 A.2d 666 (Conn. 1991)
- *Kmart Properties, Inc.*, NM Tax and Rev. Dep't (2000)

NEXUS

(JUST PASSING THROUGH)

Attributional Nexus - Agency

- **Future Issues**
 - **Will a out-of-state direct retailer's California affiliate accepting returns (and granting credits) for goods purchased from the direct seller subject the direct retailer to California's tax jurisdiction?**
 - **Will an out-of-state corporation's advertising on a broadcast made by a California television station subject the corporation to California's tax jurisdiction?**
 - **Will an out-of-state corporation's use of a California freight consolidator subject the corporation to California tax jurisdiction?**

NEXUS (JUST PASSING THROUGH)

Attributional Nexus - Agency

- **Future Issues**
 - **Will a member of an LLC that is doing business in California be subject to California tax?**
 - **Will a limited partner of a partnership that is doing business in California be subject to California tax?**
 - **Will a shareholder of an S corporation doing business in California be subject to California tax?**

NEXUS (JUST PASSING THROUGH)

Attributional Nexus - Alter Ego

- Prior Case
 - *Pearle Health Serv., Inc. v. Taylor*, 799 S.W.2d 655 (Tenn. 1990)



NEXUS (JUST PASSING THROUGH)

Attributional Nexus - Alter Ego

- **Future Issue**
 - Will affiliates' sloppy regard for corporate technicalities result in their separate existences being disregarded for California tax jurisdictional purposes?



NEXUS (JUST PASSING THROUGH)

State Legislative Activity







Open Discussion

